

**REMARKS**

The present application has been reviewed in light of the Final Office Action mailed October 16, 2008 and the Advisory Action January 15, 2009. Claims 1, 3, 9, 16, 17 and 20 are currently pending. Reconsideration of the present application is respectfully requested.

Claims 1, 3, 9, 12, 16, 17 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,267,772 to Mulhauser et al. (hereinafter referred to as "Mulhauser") in view of U.S. Pat. No. 5,690,676 to DiPoto et al. (hereinafter referred to as "DiPoto"). Applicants respectfully traverse the rejections of Claims 1, 3, 9, 16, 17 and 20. Applicants note that Claim 12 was previously cancelled.

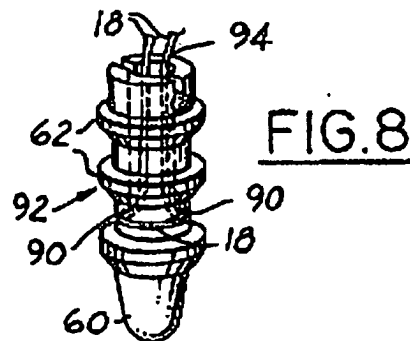
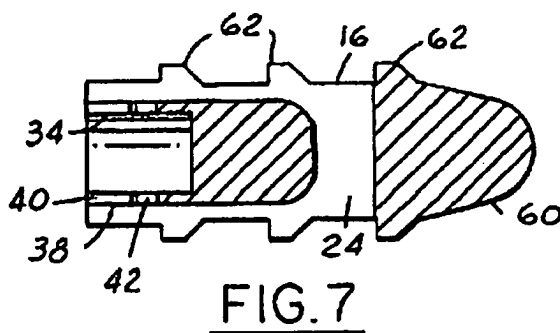
Claim 1 recites, an encapsulation device for the repair of an articular cartilage defect comprising *inter alia*, an elongated leg structure comprising a plurality of elongated leg members..., said leg members each ... being of a generally conical configuration along the length thereof, each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending substantially the length of each of said leg members to a point proximate a closed distal end thereof. Claim 20 recites, a method for effecting a repair to an articular cartilage defect, the method comprising *inter alia*, providing an encapsulation device comprising ... an elongated leg structure comprising ... legs each provided with a central channel therein, the channel being open on a proximal side of the frame member and extending substantially the length of each of said leg member to a point proximate a closed distal end thereof; ...and, receiving a distal end of an insertion tool within the central channels of each of the leg members.

Mulhauser discloses an implantable prosthesis for repairing and reinforcing a ruptured or defective muscle wall including a pliable tissue infiltration fabric. (See column 3, lines 39-41). As conceded by the Examiner, Mulhauser fails to teach legs which are several times longer than the thickness of the body or legs that contain central channels.

In the Office Action, the Examiner stated the following:

"DiPoto '676 teaches a device for penetrating the body comprising a leg (16) that contain a central channel (34) that is closed at the distal end. The leg further contains a tapered portion (60) and an end portion that is enlarged circumferentially (62). It would have been obvious to one skilled in the art at the time the invention was made to modify the device taught by Mulhauser '772 with the legs taught by DiPoto '676 because they are longer and capable of engaging the tissue better and are more easily used with a deployment tool because the central channel can engage with the deployment tool (see Figures 1-3)."

With reference to FIGS. 7 and 8, reproduced hereinbelow, DiPoto discloses a suture anchor 16 for securing a suture 18 within bone. Anchor 16 defines a socket 34 in a back end thereof and includes a front end or tip 60 which is rounded, conical or pointed for ease of placement and insertion. A hole or opening 24 is formed through anchor 16 between socket 34 and front end 60 to receive a suture 18. The body portion of anchor 16 includes ridges 62 for securing anchor 16 within bone.



Applicants respectfully submit that neither Mulhauser nor DiPoto disclose an encapsulation device as recited in Claim 1. More specifically, Claim 1 recites, *inter alia*, “said leg members each ... being of a generally conical configuration along substantially the length thereof”, and “each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending substantially the length of each of said leg members to a point proximate a closed distal end thereof”. Claim 20 recites, *inter alia*, “legs each provided with a central channel therein, the channel being open on a proximal side of the frame member and extending substantially the length of each of said leg members to a point proximate a closed distal end thereof” and “receiving a distal end of an insertion tool within the central channels of each of the leg members.” Neither Mulhauser nor DiPoto disclose an encapsulation device including leg members as recited in Claim 1 or legs as recited in Claim 20 or the step of receiving a distal end of an insertion tool with the central channels of each of the leg members as recited in Claim 20.

As conceded by the Examiner, Mulhauser’s implantable prosthesis does not disclose legs including channels. Assuming the suture anchor of DiPoto may properly be combined with the implantable prosthesis of Mulhauser, which Applicants do not, DiPoto’s anchor does not disclose leg members having a central channel which extends substantially the length of each of the legs to a point proximate a closed distal end thereof, as recited in Claim 1. With reference to FIGS. 7 and 8, suture anchor 16 includes a conical front end or tip 60. However, anchor 16 does not have a generally conical configuration along the length thereof, as recited in Claim 1. Instead, “leg 16” includes a generally cylindrical body including ridges 62 sized to be received in a hole having a diameter slightly less than the outer diameter of ridges 62. Furthermore, suture anchor 16 includes a proximally located socket 34 which does not extend substantially the length of the

suture anchor to a point proximate to a closed distal end thereof, as recited in Claim 1. Instead, as seen in FIG. 7, socket 34 extends to a location proximal of hole or opening 24. For at least these reasons, amended Claims 1 and 20 are patentable over Mulhauser and DiPoto, taken alone or in combination, and are in condition for allowance.

Since Claims 3, 9, 12, 16 and 17 depend from independent Claim 1, and contain all the limitations of Claim 1, for at least the reasons discussed above with respect to Claim 1, Applicants submit that each of Claims 3, 9, 12, 16 and 17 is also in condition for allowance.

In view of the foregoing, this case is believed to be in condition for allowance, such early and favorable action is being earnestly solicited.

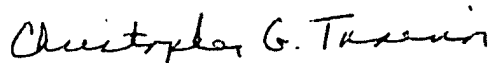
Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below. Early and favorable consideration of the presently amended application is earnestly solicited.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this

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Amendment dated February 12, 2009  
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paper as a petition to extend the time as required and charge Deposit Account No. 21-0550  
therefor.

Respectfully submitted,



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